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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,463	11/06/2003	Toshiaki Hirata	566.37536CX1	8553
24956	7590	03/10/2006	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			NGUYEN, THU HA T	
		ART UNIT	PAPER NUMBER	
			2155	

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/701,463	HIRATA ET AL.	
	Examiner Thu Ha T. Nguyen	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/11/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

1. Claims 1-5 are presented for examination.

### **Continued Examination Under 37 CFR 1.114**

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 28, 2005 has been entered.

### **Response to Arguments**

3. Applicant's arguments filed November 28, 2005 have been fully considered but they are not persuasive because of the following reasons:
4. Applicant argues that neither Bigus nor Lapourtre teaches or suggests the delay factor lies in a computer network which connects computers rather than other factors. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the delay factor lies in a computer network which connects computers rather than other factors) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

5. Applicant argues that Bigus does not teach or suggest the effect on delay by a computer system itself in which the job is executed and effect on delay by the execution of other jobs by other computers on the network. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the effect on delay by a computer system itself in which the job is executed and effect on delay by the execution of other jobs by other computers on the network) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. Applicant argues that Bigus and Lapourtre fail to teach or suggest a specifying step in which a delay factor, is decided, in accordance with said history information collected by the collecting step and definition information expressing an execution schedule of each job by each computer of said computers. In response to applicant's argument, the examiner asserts that Bigus does teach the feature of a specifying step in which a delay factor, is decided, in accordance with said history information collected by the collecting step and definition information expressing an execution schedule of each job by each computer of said computers as shown in abstract, figures 1, 7-10, col.3, line 38-col. 4, line 3, col. 4, line 35-col. 5, line 65.

7. Further, applicant argues that Lapourtre fails to teach a collecting step in which history information expressing history of execution of a job is collected from each computer of said computers assigned to each of said jobs which are executed in a

predetermined order. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

8. As a result, cited prior art does disclose a system and method for specifying a delay factor in processing jobs, as broadly claimed by the Applicants. Applicants clearly have still failed to identify specific claim limitations that would define a clearly patentable distinction over prior art.

9. Therefore, the examiner asserts that cited prior art teaches or suggests the subject matter broadly recited in independent claims 1, 4 and 5. Claims 2-3 are also rejected at least by virtue of their dependency on independent claims and by other reasons set forth in this office action below. Accordingly, claims 1-5 are rejected.

### **Claim Rejections - 35 USC § 103**

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bigus et al.**, (hereinafter Bigus) U.S. Patent No. **5,442,730**, in view of **Lapourtre et al.** (hereinafter Lapourtre) U.S. Patent No. **5,136,708**

12. As to claim 1, **Bigus** teaches the invention substantially as claimed, including a method of specifying a delay factor, for specifying a delay factor in processing jobs which are executed in a predetermined order by a computer system having a plurality of computers interconnected to each other by a network, wherein said method comprises:

a collecting step in which history information expressing history of execution of a job is collected from each computer of said computers assigned to each of said jobs which are executed in a predetermined order (abstract, figures 1, 8, col. 3 lines 38-55, col. 4 line 35-col. 5, line 28); and

a specifying step in which a delay factor, is decided, in accordance with said history information collected by the collecting step and definition information expressing an execution schedule of each job by each computer of said computers (abstract, figures 1, 7-10, col.3, line 38-col. 4, line 3, col. 4, line 35-col. 5, line 65).

**Bigus** discloses the step of collecting history information from one computer system (abstract, figure 8) could be collected history information from each computer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made that **Bigus** implicitly discloses collecting step of history information from one computer equivalent to collecting history information from each computer disclosed in the instant claim. A person of ordinary skill in the art would have recognized that **Bigus** performs the same function in substantially the same way to reach substantially the same result to provide an efficient communication system that

can collect history information from one computer as same as collect history information from each computer.

**Bigus** does not explicitly teach the feature of permitting an analysis of said delay factor to be performed in a part of the computer system exclusive of other part of the computer system.

**Lapourtre** teaches permitting an analysis of said delay factor to be performed in a part of the computer system exclusive of other part of the computer system (abstract, col. 3, lines 32-50, col. 10, lines 10-39 -when one of the computer system fail, it is isolated from other computer systems and one of the other computer takes over the task. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the feature as taught by **Lapourtre** into Bigus system because it would provide an efficient system to perform the task (i.e., job) by a specific function module in the system so that the resulting system is relatively insensitive to malfunctions and can readily be expanded (see Lapourtre col. 3, lines 20-27).

13. As to claim 2, **Bigus** teaches the invention substantially as claimed, wherein said history information is information that can specify an execution start time at which said each computer start execution of the job, an execution end time at which that computer ended the job, and an execution time which that computer required to execute the job (col. 2 lines 38-46); said definition information is information that can specify a planned start time, a planned time at which execution of each job is started, a planned end time being a planned time at which execution of each job is ended, and a planned

execution time, a planned time required for execution of each job (col. 2 lines 59-col. 3 lines 7); and said specifying step comprises: a first step in which a computer assigned to a job whose execution time exceeds a planned execution time by more than a predetermined degree is extracted as a delay factor in processing said job net; and a second step in which, with respect to a job whose execution end time is latest among jobs executed just prior to a job whose execution start time is delayed from a planned start time by more than a predetermined degree, when said execution end time is not delayed from a planned end time by more than a predetermined degree, said pad of the computer system that undertakes transfer between said job whose execution start time is delayed from the planned start time by more than the predetermined degree and said job executed just prior to the job in question is extracted as a delay factor in processing said job net (col. 3 lines 42-48).

14. As to claim 3, **Bigus** teaches the invention substantially as claimed, wherein said second step when a same computer is assigned to said job whose execution start time is delayed from the planned start time by more than the predetermined degree and to said job executed just prior to the job in question, said computer is extracted as the delay factor, and when different computers are respectively assigned to said job whose execution start time is delayed from the planned start time by more than the predetermined degree and to said job executed just prior to the job in question, a network between said computers is extracted as the delay factor (col. 3 lines 42-48). **Bigus** discloses that the delay cost function could be

function of multiple variables. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to extract the job in question as the delay factor when processing in the same computer and to extract the network between computers as the delay factor when processing in different computers. It would have been obvious to use these delay factors as variables for the delay cost function because **Bigus** discloses that the function can be dependent on multiple variables.

15. As to claim 4, **Bigus** teaches the invention substantially as claimed, including a recording medium that stores thereon a program to be read and executed by a computer, wherein said program is one for specifying a delay factor in processing jobs which are executed in a predetermined order by a computer system having a plurality of computers interconnected to each other by a network (abstract, figures 1, 8, col. 3 lines 38-55, col. 4 lines 54-67) wherein said program when executed causes said computer to perform:

a collecting step in which history information is collected from each computer of said computers assigned to each of a series of jobs which are executed in a predetermined order and constitute a job net to said computer system, said history information expressing a history of executing a job which constitutes said job net and is assigned to said each computer (abstract, figures 1, 8, col. 3 lines 38-55, col. 4 line 35-col. 5, line 28); and

a specifying step in which a delay factor, is decided, based on said history information collected by the collecting step and definition information expressing an

execution schedule of each job by each computer of said computers (abstract, figures 1, 7-10, col.3, line 38-col. 4, line 3, col. 4, line 35-col. 5, line 65).

**Bigus** does not explicitly teach the feature of permitting an analysis of said delay factor to be performed in a part of the computer system exclusive of other part of the computer system.

**Lapourtre** teaches permitting an analysis of said delay factor to be performed in a part of the computer system exclusive of other part of the computer system (abstract, col. 3, lines 32-50, col. 10, lines 10-39 -when one of the computer system fail, it is isolated from other computer systems and one of the other computer takes over the task. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the feature as taught by **Lapourtre** into **Bigus** system because it would provide an efficient system to perform the task (i.e., job) by a specific function module in the system so that the resulting system is relatively insensitive to malfunctions and can readily be expanded (see Lapourtre col. 3, lines 20-27).

16. As to claim 5, **Bigus** teaches the invention substantially as claimed, including a management unit for specifying a delay factor in processing jobs which are executed in a predetermined order by a computer system having a plurality of computers interconnected to each other by a network said management unit comprising:

means for collecting history information from each computer of said computers assigned to each of said jobs, said history information expressing a history of executing

a job which is assigned to said each computer (abstract, figures 1, 8, col. 3 lines 38-55, col. 4 line 35-col. 5, line 28); and

means for deciding a delay factor, based on said history information collected by said means for collecting and definition information expressing an execution schedule of each job by each computer and said computers (abstract, figures 1, 7-10, col.3, line 38-col. 4, line 3, col. 4, line 35-col. 5, line 65).

**Bigus** does not explicitly teach the feature of permitting an analysis of said delay factor to be performed in a part of the computer system exclusive of other part of the computer system.

**Lapourtre** teaches permitting an analysis of said delay factor to be performed in a part of the computer system exclusive of other part of the computer system (abstract, col. 3, lines 32-50, col. 10, lines 10-39 -when one of the computer system fail, it is isolated from other computer systems and one of the other computer takes over the task. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the feature as taught by **Lapourtre** into Bigus system because it would provide an efficient system to perform the task (i.e., job) by a specific function module in the system so that the resulting system is relatively insensitive to malfunctions and can readily be expanded (see Lapourtre col. 3, lines 20-27).

### Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see PTO-892 attachment).

Art Unit: 2155

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Ha Nguyen, whose telephone number is (703) 305-7447. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Najjar Saleh, can be reached at (571) 272-4006.

The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
ThuHa Nguyen  
Patent Examiner

March 6, 2006